

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NC INTERACTIVE, LLC, a Delaware limited liability company,

**Plaintiff.**

Case No. 2:22-cv-1251

AMBER STUDIO S.A., a Romanian company,

Defendant.

# **COMPLAINT FOR BREACH OF CONTRACT, UNJUST ENRICHMENT, AND COPYRIGHT INFRINGEMENT**

## I. INTRODUCTION

1. Plaintiff NC Interactive, LLC (“NC Interactive”) brings this action against Amber Studio S.A. (“Amber”) for breach of contract, unjust enrichment, and copyright infringement. NC Interactive and Amber were parties to a Game License Agreement (the “Agreement”) to develop a game known as *Criminal Empire* (the “Game.”). The Agreement gave Amber a limited, non-assignable and non-sublicensable right to use certain of NC Interactive’s intellectual property. Amber agreed to use that intellectual property to develop the Game and Game-related services.

2. Amber not only failed to adhere to its contractual obligations under the Agreement, but Amber also gave NC Interactive's intellectual property and confidential information to a third party known as The Syndicate Production PTE Ltd. ("Syndicate"). Amber transferred NC Interactive's intellectual property to Syndicate without NC Interactive's knowledge or consent.

1 Rather than develop the Game, Amber and Syndicate formed an agreement to create and monetize  
2 non-fungible tokens (“NFT”) using characters and other images from among NC Interactive’s  
3 intellectual property.

4       3.      Amber and Syndicate created and sold the NFT, generating millions of dollars in  
5 revenue. Amber has refused to pay NC Interactive any amount arising from Amber’s misuse of  
6 NC Interactive’s property. Amber has also harmed the value of NC Interactive’s licensed  
7 intellectual property and reduced the likelihood of generating goodwill associated with such assets  
8 by creating confusion in the marketplace as to the forthcoming existence of the Game.

9       4.      NC Interactive brings this action to recover damages it suffered as a result of  
10 Amber’s breach of the Agreement, to recover all amounts by which Amber was unjustly enriched  
11 through the unauthorized use of NC Interactive’s intellectual property and confidential  
12 information, to recover for infringement of NC Interactive’s copyrighted material, and to obtain  
13 an injunction against Amber’s further use of NC Interactive’s intellectual property.

14           **II. PARTIES AND CORPORATE DISCLOSURE STATEMENT**

15       5.      Plaintiff NC Interactive, LLC is a Delaware limited liability company with its  
16 principal place of business in Bellevue, Washington. NC Interactive’s sole member is NC West  
17 Holdings, Inc., a Delaware corporation, which is a wholly owned subsidiary of NCSOFT  
18 Corporation, a publicly-traded Korean corporation.

19       6.      Defendant Amber Studio S.A. is a Romanian company with its principal place of  
20 business in Bucharest, Romania.

21           **III. JURISDICTION AND VENUE**

22       7.      This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because the  
23 controversy is between citizens of different states and/or of a foreign state, and the amount in  
24 controversy exceeds \$75,000.

1       8.     This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a)  
 2 because this action arises under the federal Copyright Act, 17 U.S.C. § 101, et seq. This Court has  
 3 supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1337.

4       9.     This Court has personal jurisdiction under RCW 4.28.080 and Federal Rule of Civil  
 5 Procedure 4 because, under Section 13(b) of the Agreement, Amber agreed that “[a]ll disputes  
 6 between the Parties arising from or related to this Agreement shall be subject to the exclusive  
 7 jurisdiction of the state and federal courts sitting in the State of Washington.”

8       10.    Venue in this district is proper under 28 U.S.C. § 1331(b)(2), or in the alternative,  
 9 § 1331(b)(3).

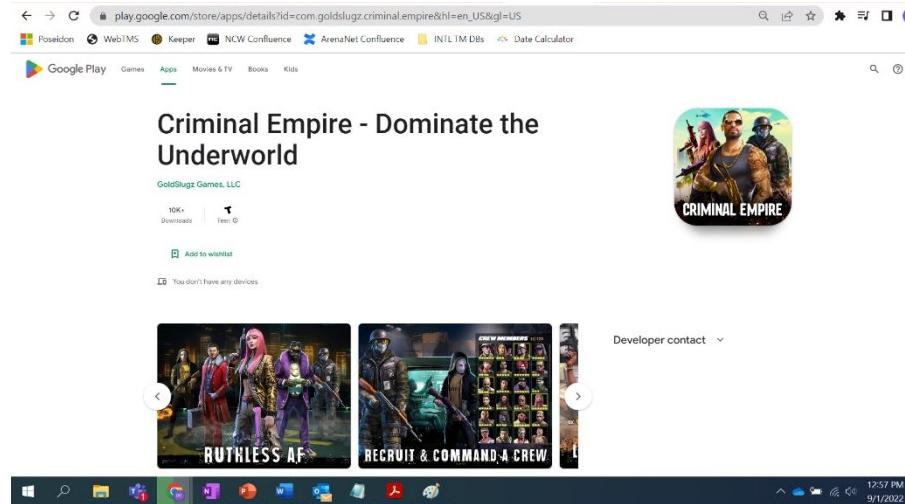
#### 10                  **IV. FACTUAL ALLEGATIONS**

11       11.    NC Interactive is a developer, owner, and service provider of various game  
 12 software.

13       12.    In 2019, NC Interactive paid Amber to develop the Game on a work-for-hire basis,  
 14 pursuant to which NC Interactive held ownership of all intellectual property and confidential  
 15 information created by Amber. Amber developed source code, images, characters and other game-  
 16 related property under the 2019 agreement. NC Interactive owns intellectual property rights in  
 17 connection with the Game, including graphics, logos, trademarks, characters, and source code  
 18 associated with the Game.

19       13.    In April 2020, NC Interactive released the Game for sale exclusively in the  
 20 Philippines as part of an initial launch of the Game. Thus, the Game was first published in the  
 21 Philippines and is a foreign work.

22       14.    In 2020, NC Interactive, under the name of its subsidiary, GoldSlugz Games, LLC,  
 23 briefly published the Game on the Apple and Google Play mobile app stores. The game appeared  
 24 as follows:



See [https://play.google.com/store/apps/details?id=com.goldslugz.criminal.empire&hl=en\\_US&gl=US](https://play.google.com/store/apps/details?id=com.goldslugz.criminal.empire&hl=en_US&gl=US)

15. Shortly thereafter, NC Interactive elected to “shelve” the Game and cease further work. Amber then indicated a willingness to license the Game assets from NC Interactive and develop the Game itself.

### The License Agreement

16. On September 25, 2021, NC Interactive and Amber entered into the Agreement to develop the Game. A copy of the Agreement is attached as Exhibit A.

17. The crux of the Agreement was Amber’s creation and publication of a playable video game using the then-existing Game assets as a starting point. Taken together, the provisions of the Agreement called for a series of events, including the creation of a written development and launch plan, which would eventually result in Amber making the Game available for sale to and use by the public. This date was defined as the Commercial Launch Date. *See* Agreement Section 1(c) (defining “Commercial Launch Date”).

18. To allow Amber the rights necessary to develop the Game, NC Interactive granted Amber an exclusive, non-assignable, non-sublicensable, royalty-bearing license related to development, marketing, and distribution of the Game. *Id.* Section 2(a). Specifically, NC Interactive granted Amber the right to “distribute, provide, display, use, publish, market, operate,

1 and/or manage or otherwise exploit” the Game, Game Services, and Game Derivative Works, as  
 2 well as the right to provide customer support, advertise, and collect fees in connection with the  
 3 Game.” *Id.*

4       19.     In addition, NC Interactive granted Amber a non-exclusive, non-assignable, non-  
 5 sublicensable license to use graphics, logos, trademarks, service marks, and characters associated  
 6 with the Game (the “Game Marks”). *Id.* Sections 1(n), 2(b)(i). Amber was required to obtain NC  
 7 Interactive’s prior written approval before using the Game Marks. *Id.* Section 2(b)(ii). Amber was  
 8 also prohibited from taking any action that harms or could reasonably be expected to harm  
 9 goodwill associated with the Game Marks and NC Interactive’s other brands. *Id.*

10      20.    NC Interactive expressly ***did not*** grant Amber the right to sub-license or assign the  
 11 Game or NC Interactive’s intellectual property to any third party. NC Interactive also did not grant  
 12 Amber the right to use NC Interactive’s intellectual property for purposes other than those  
 13 specified in Section 2(a) of the Agreement. All use of the licensed property and work was to be  
 14 performed by Amber.

15      21.    Under the Agreement, Amber was required to perform several obligations.  
 16 Specifically, within 60 days of the Agreement’s effective date, Amber was required to submit to  
 17 NC Interactive a written plan for further development and improvement of the Game; a proposal  
 18 for what Game Services will be offered to End Users; and a written plan for distributing and  
 19 publishing the Game. *Id.* Section 3(b). Within six months of the Agreement’s effect date, Amber  
 20 was required to inform NC Interactive in writing of its initial marketing plan for supporting  
 21 distribution and sale of the Game. *Id.* Section 5.

22      22.    Under the Agreement, Amber was also required to protect NC Interactive’s  
 23 Confidential Information and to not disclose NC Interactive’s Confidential Information to a third  
 24 party without NC Interactive’s prior consent. *Id.* Section 10(a). The Agreement defines  
 25 Confidential Information to include “proprietary information . . . including, without limitation,  
 26 information, data, know-how, software, source code, translations, compilations, and copies or

1 derivative works thereof” and “other information that, by the nature of the circumstances  
2 surrounding its disclosure, ought to be treated in good faith as proprietary and/or confidential.” *Id.*  
3 Section 1(d).

4 **Amber’s Failure to Perform the Agreement**

5 23. Amber failed to comply with its obligations under the Agreement. Specifically,  
6 Amber did not:

- 7 a. deliver any written development or distribution plan within 60 days of the  
8 Agreement’s effective date;
- 9 b. inform NC Interactive in writing of its initial marketing plan within six months of  
10 the Agreement’s effect date;
- 11 c. develop the Game and launch it commercially;
- 12 d. adhere to Amber’s confidentiality obligations; or
- 13 e. pay any royalties to NC Interactive arising from the millions of dollars Amber  
14 generated using NC Interactive’s intellectual property and Confidential  
15 Information.

16 24. In fact, at the time NC Interactive terminated the Agreement in July 2022—more  
17 than nine months after the Agreement’s effective date—Amber had not delivered any of the  
18 required documents or developed the Game in any meaningful way.

19 **Amber’s Misuse of NC Interactive’s Property**

20 25. In or about January 2022, NC Interactive learned that Amber had partnered with a  
21 third party, known as Syndicate, to monetize the Game by rebranding the Game as “Syn City” and  
22 creating and selling NFTs using NC Interactive’s intellectual property.<sup>1</sup> Syndicate’s website,  
23 syn.city, and related social media pages, which were collectively used to generate interest in its  
24

25 \_\_\_\_\_  
26 <sup>1</sup> An NFT is a unique, non-fungible digital asset recorded on a blockchain (a type of distributed ledger) that can represent and certify its owner’s right to, and enable its owner to access, specific digital content associated with the NFT.

1 sale of the NFTs, prominently featured gameplay footage and characters from the Game.<sup>2</sup> Amber  
 2 did not notify or seek NC Interactive's permission prior to entering into an agreement to transfer  
 3 NC Interactive's intellectual property to Syndicate.

4       26. Upon information and belief, in the Amber/Syndicate agreement, Amber sub-  
 5 licensed or assigned rights to the Game and/or NC Interactive's intellectual property to Syndicate  
 6 as part of a partnership. Upon information and belief, Amber also shared NC Interactive's  
 7 Confidential Information with Syndicate, such as details about the unpublished Game and  
 8 marketing strategy. Amber has never provided NC Interactive with a copy of the Amber/Syndicate  
 9 agreement but has described aspects of the agreement via email and oral communications.

10       27. Syndicate and Amber failed to run proper trademark clearance of Syn City and  
 11 consequently received complaints that Syn City infringed Frank Miller, Inc.'s rights to its SIN  
 12 CITY marks (US registration numbers 4121720; 1875224).<sup>3</sup> Consequently, in approximately  
 13 January 2022, Amber's representatives informed NC Interactive that it was working with  
 14 Syndicate to change the name of the Game from Criminal Empire to "MOBLAND". In February  
 15 2022, Syndicate set up mob.land, a website that featured art assets for MOBLAND and rebranded  
 16 its Twitter and Discord accounts to @MobLandHQ and discord.gg/mobland respectively. The art  
 17 assets on Syndicates website, Twitter, and Discord included the use of NC Interactive's images  
 18 taken from the Game's Google Play store listing and from game footage recorded by the Game's  
 19 users during its brief publishing run as well as other NC Interactive code and proprietary, non-  
 20 public information and trademarks. Amber's representatives further stated that Syndicate had been  
 21 selling NFTs relating to anticipated Game features.

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<sup>2</sup> See, e.g., gameplay footage uploaded by the YouTube channel AK TOPUS GAMING on April 16, 2022 <https://youtu.be/pkGHdWnTe34?t=216>. Compared to a cached copy of the syn.city website from January 31, 2022 [https://syn.city/](https://web.archive.org/web/20220131140904/https://syn.city/).

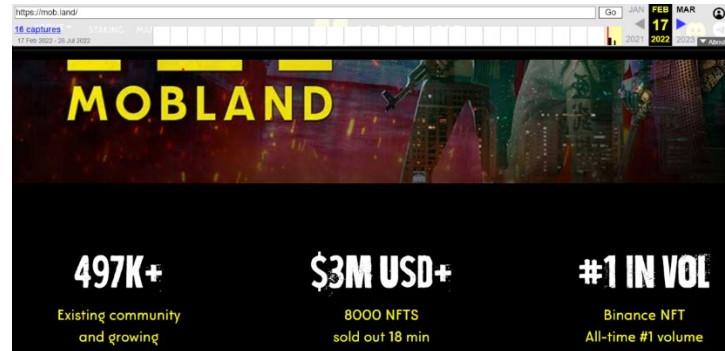
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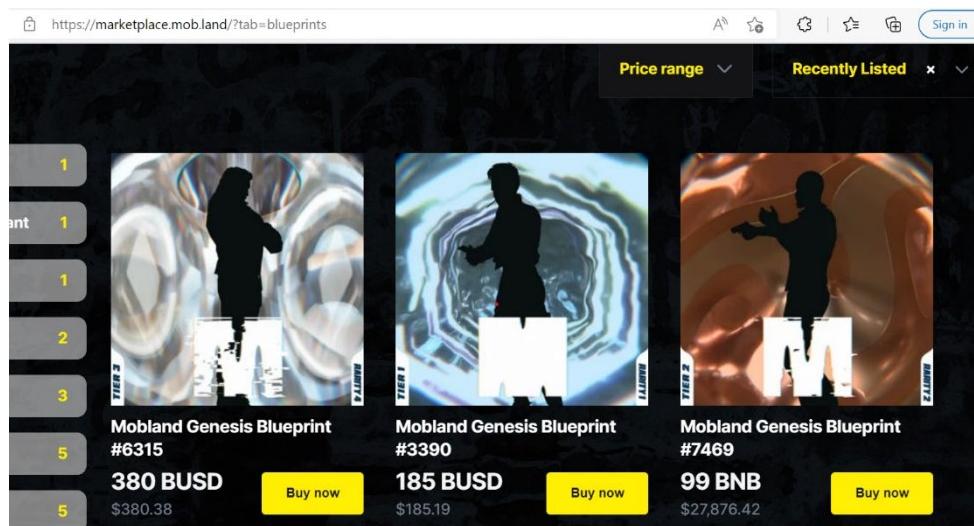
<sup>3</sup> <https://medium.com/@MOBLANDHQ/mob-land-the-mafiametaverse-evolution-65cf8515f642>

1       28.     Amber did not seek NC Interactive's permission to use the art assets or to create  
 2 NFTs using intellectual property associated with the Game—a Game Amber has failed to develop  
 3 as contemplated by the Agreement.

4       29.     On information and belief, Amber allowed Syndicate to create the website  
 5 <https://mob.land>. As of February 17, 2022, the MOBLAND website stated it made sales of over  
 6 8,000 NFT for a total of more than \$3 million in revenue:



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 9  
 10      30.     The MOBLAND website continues to offer for sale on its "Marketplace" page  
 11 various NFT generated in whole or in part from NC Interactive's intellectual property. On  
 12 information and belief, the NFT for sale on the MOBLAND website are copies or derivatives of  
 13 images and code from NC Interactive's intellectual property. An example of the sales webpage as  
 14 of August 29, 2022 is as follows:



1       31. An affiliate of NC Interactive, known as Mobland Games, LLC, has applied for  
2 registration of various trademarks, including but not limited to the term “MOBLAND” for use  
3 with NFT under United States trademark Serial Number 97290467.

4       32. In or around April 2022, Amber sent a royalty statement to NC Interactive  
5 admitting that Amber (through the MOBLAND website) had been selling NFTs created from NC  
6 Interactive’s intellectual property since December 2021. Several examples of the Amber/Syndicate  
7 use of NC Interactive’s intellectual property are attached as Exhibit C to this Complaint.

8       33. In or around June 2022, Amber’s CEO acknowledged in a statement to NC  
9 Interactive’s CEO that Amber owed NC Interactive at least \$138,378.70 arising from NFT sales,  
10 assuming such sales were properly authorized under the Agreement and subject to the royalty-rate  
11 payments set forth in the Agreement.

12       34. Amber also disclosed to NC Interactive that Syndicate was refusing to pay Amber  
13 for NFT or other sales Syndicate had completed with the use of NC Interactive’s intellectual  
14 property. Amber asserted that Syndicate was in breach of the Amber/Syndicate agreement.

15       35. Amber has lost control of NC Interactive’s intellectual property and, on information  
16 and belief, has not initiated legal action to seek an injunction against Syndicate’s continued use  
17 and sale of NC Interactive’s property in the marketplace.

18       36. On July 15, 2022, NC Interactive provided written notice to Amber stating that NC  
19 Interactive was terminating the Agreement effective immediately due to Amber’s failure to  
20 perform its obligations. NC Interactive demanded that Amber pay the minimum of \$138,378.70 in  
21 royalties arising from Amber’s unauthorized NFT sales related to the Game. A copy of the  
22 termination letter is attached as Exhibit B.

23       37. Pursuant to Section 9(c) of the Agreement: “Upon termination or expiration of this  
24 Agreement, all licenses granted to Licensee hereunder shall immediately be terminated, and  
25 Licensee shall immediately stop operating, providing the Game and/or Game Services.” Despite  
26

1 the termination of the license, Amber (through its agreement with Syndicate) continues to use and  
2 sell NFT created using NC Interactive's intellectual property.

3       38. To date, Amber has refused to pay NC Interactive any amounts arising from  
4 Amber's monetization of NC Interactive's intellectual property. Amber has also failed to cease  
5 using and return NC Interactive's property.

6       39. Amber has caused reputational and brand harm to NC Interactive by willfully  
7 marketing (or causing Syndicate to market outside the scope of the Agreement) NFTs using NC  
8 Interactive's intellectual property without NC Interactive's knowledge or permission. Such NFTs  
9 relate to a video game title that NC Interactive has no immediate expectation of releasing because  
10 Amber failed to develop the Game.

#### **Indemnification of Damages and Costs**

11       40. Amber is obligated by the Agreement to broadly indemnify and hold NC Interactive  
12 harmless for all manner of "damages and costs (e.g. reasonable attorney's fees) arising out of or  
13 in connection with Licensor's gross negligence or willful misconduct." Agreement Section 8(c).  
14 This obligation is not limited to damages and costs incurred or caused by third parties, as  
15 distinguished from other indemnification obligations in the Agreement.

16       41. Amber's intentional and willful misuse of NC Interactive's intellectual property—  
17 including but not limited to transferring that intellectual property to Syndicate without NC  
18 Interactive's knowledge or consent—obligates Amber to indemnify NC Interactive for all damages  
19 and costs arising therefrom.

#### **Governing Law**

20       42. Pursuant to Section 13(b) of the Agreement: "This Agreement, and all disputes,  
21 claims, actions, suits or other proceedings arising hereunder, is governed by and enforced under  
22 the laws of the United States and the State of Washington, but excluding its conflict of law  
23 provisions that would require the application of the laws of any other jurisdiction and excluding  
24 the United Nations Convention on Contracts for the International Sale of Goods."

## **V. CAUSES OF ACTION**

## **Count I - Breach of Contract**

43. NC Interactive incorporates by reference as if expressly set forth in this paragraph the preceding factual allegations in paragraphs 1–42 of this Complaint.

44. NC Interactive and Amber are parties to the Agreement, which forms a valid and enforceable contract.

45. The Agreement granted Amber an exclusive, non-assignable, non-sublicensable, royalty-bearing license to use NC Interactive's intellectual property in connection with the Game. The Agreement required Amber to timely provide certain deliverables; to obtain NC Interactive's written approval before using the Game Marks; to not take any action that harms or could reasonably harm goodwill associated with the Game Marks or NC Interactive's other marks; and to protect NC Interactive's Confidential Information.

46. Any and all conditions precedent to Amber's performance of its contractual obligations under the Agreement have been satisfied or waived.

47. Through the conduct described above, Amber breached the Agreement by, at minimum, failing to submit written deliverables within the specified time; using NC Interactive's intellectual property beyond the scope of the license, including creating NFTs using intellectual property associated with the Game and sub-licensing or assigning NC Interactive's intellectual property to a third party; using Game Marks on the MOBLAND website without prior written approval from NC Interactive; causing reputational harm to NC Interactive by using its intellectual property to create NFTs without a right to do so and without having developed the Game; assigning, sub-licensing and/or transferring NC Interactive's Confidential Information to Syndicate without notice to or authorization from NC Interactive; and refusing to pay NC Interactive any royalties, which Amber admits to being a minimum of \$138,378.70.

48. As a proximate result of Amber's breach of the Agreement, NC Interactive suffered damages in an amount to be proven at trial.

1  
**Count II – Unjust Enrichment**

2       49. NC Interactive incorporates by reference as if expressly set forth in this paragraph  
 3 the preceding factual allegations in paragraphs 1–42 of this Complaint.

4       50. Separately and in the alternative to Count I, to the extent Amber used NC  
 5 Interactive's intellectual property outside the scope of the license provided in the Agreement,  
 6 Amber is liable under Washington law under the equitable doctrine of unjust enrichment.

7       51. NC Interactive conferred a benefit upon Amber when it transferred NC Interactive's  
 8 intellectual property and non-public, proprietary information to Amber. Without a license or other  
 9 contractual right to do so, Amber used NC Interactive's property to partner with Syndicate to create  
 10 and sell NFTs without the necessary contractual rights. Additionally, the Agreement terminated in  
 11 July 2022 and Amber continues to use NC Interactive's property without any contractual rights.

12       52. Amber retained the benefit of NC Interactive's property outside the scope of the  
 13 license with appreciation or knowledge of the benefit conferred.

14       53. Amber's retention of revenue earned from the NFTs created from an unlicensed  
 15 and unauthorized use of NC Interactive's intellectual property make it inequitable for Amber to  
 16 retain the benefit without payment of its value. To the extent of Amber's use of NC Interactive's  
 17 intellectual property outside the scope or duration of the Agreement, Amber should be required to  
 18 transfer all revenue (not merely a royalty percentage) to NC Interactive.

19       **Count III – Direct or Contributory Copyright Infringement**

20       54. NC Interactive incorporates by reference as if expressly set forth in this paragraph  
 21 the preceding factual allegations in paragraphs 1–42 of this Complaint.

22       55. Separately and in the alternative to Counts I and II, to the extent Amber used NC  
 23 Interactive's intellectual property outside the scope of the license provided in the Agreement,  
 24 Amber is liable for direct copyright infringement and/or contributory copyright infringement.

25       56. All elements of the Game that NC Interactive provided to Amber, and all stages of  
 26 development and production of the Game, are original works containing copyrightable subject

1 matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101, et seq. NC  
2 Interactive is the exclusive owner of rights under copyright in and to the Game and all derivative  
3 works and elements thereof. The Game was first published exclusively in the Philippines and thus  
4 is a foreign work (i.e., non-United States work) under the Copyright Act. NC Interactive has filed  
5 a pending application for the Game and elements thereto before the U.S. Copyright Office.

6       57. Through Amber's conduct alleged herein, including but not limited to Amber's use  
7 (or allowing Syndicate to use) the Game to create and sell unauthorized NFTs and other  
8 preparation and reproduction of derivative works based on the Game without NC Interactive's  
9 permission, Amber has directly or contributorily infringed NC Interactive's exclusive rights in the  
10 Game and the elements thereof in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501.

11       58. Amber's infringing conduct was and continues to be willful and with full  
12 knowledge of NC Interactive's rights in the Game. Alternatively, Amber knew of Syndicate's  
13 copyright infringement and Amber induced, caused or materially contributed to Syndicate's  
14 infringement on NC Interactive's rights through an agreement or partnership with Syndicate and  
15 transfer of the Game assets to Syndicate without license or authorization. As a result of such willful  
16 and direct infringement or contributory infringement, Amber has illegally profited from NC  
17 Interactive's rights.

18       59. As a direct and proximate result of Amber's infringing or contributorily infringing  
19 conduct alleged herein, NC Interactive has been harmed and is entitled to damages in an amount  
20 to be proven at trial. Pursuant to 17 U.S.C. § 504(b), Amber is entitled to recovery of Amber's  
21 profits attributable to its infringing conduct alleged herein, including from any and all sales of  
22 products incorporating or embodying the copyrighted work, and an accounting of and a  
23 constructive trust with respect to such profits.

24       60. Alternatively, NC Interactive is entitled to the maximum statutory damages  
25 pursuant to 17 U.S.C. § 504(c) for Amber's ongoing, willful infringing conduct, and for such other  
26 amount as may be proper pursuant to 17 U.S.C. § 504(c).

1       61.     As a direct and proximate result of the Amber's infringing conduct alleged herein,  
2 NC Interactive has sustained and will continue to sustain substantial, immediate, and irreparable  
3 injury, for which there is no adequate remedy at law. On information and belief, and based upon  
4 the MOBLAND website statements, unless Amber's infringing conduct is enjoined by this Court,  
5 Amber will continue to infringe the copyrighted work. NC Interactive therefore is entitled to  
6 permanent injunctive relief restraining and enjoining Defendants' ongoing infringing conduct.

## **VI. REQUEST FOR RELIEF**

NC Interactive respectfully asks this Court to grant the following relief:

9           A. Judgment in favor of NC Interactive and against Amber for breach-of-contract  
10 damages in an amount to be proven at trial.

11 B. Equitable restitution and disgorgement of revenue in an amount to be proven at  
12 trial.

13 C. Judgment in favor of NC Interactive and against Amber for copyright infringement  
14 damages in an amount to be proven at trial.

15 D. An injunction requiring Amber to return all of NC Interactive's intellectual property  
16 and information and preventing further violations of NC Interactive's rights in and to the Game.

17 E. An award of pre- and post-judgment interest.

18 F. An award of attorneys' fees and costs under any agreement, statute, or rule  
19 authorizing such an award.

G. Such other and further relief as this Court deems just and equitable.

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DATED this 7th day of September, 2022.

1  
2 K&L GATES LLP  
3

4 By s/ Christopher M. Wyant  
5 Christopher M. Wyant, WSBA #35561  
6

7 By s/ Ruby Nagamine  
8 Ruby Nagamine, WSBA # 55620  
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